



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Parks Company

File: B-249473

Date: November 17, 1992

Charles F. Merz, Esq., Pedley, Ross, Zielke & Gordinier, for the protester.

Mitchell B. Polay, Esq., for The Urban Group, Inc., an interested party.

W. Graham Moses, Esq., Department of Housing and Urban Development, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award to lower cost offeror is proper where the record shows that the technical proposals were reasonably considered to be essentially equal in technical merit.

DECISION

The Parks Company protests the award of a contract to The Urban Group, Inc. by the Department of Housing and Urban Development (HUD) under request for proposals (RFP) No. 002-92-083. The protester principally contends that HUD improperly selected Urban Group on the basis of its lower cost after a determination that the two proposals (and other offerors' proposals) were essentially equal from a technical standpoint, despite the fact that the stated evaluation factors emphasized technical superiority and Parks' proposal was technically superior.

We deny the protest.

The RFP, issued on January 13, 1992, contemplated the award of a firm, fixed-price indefinite quantity contract (with cost-reimbursement portions) for Real Estate Asset Management (REAM) services for single family properties owned by HUD in the geographic area of Louisville, Kentucky. The REAM contractor was to manage properties in HUD's inventory (obtained through foreclosure or assignment of HUD insured mortgages) to assure proper maintenance and management of the properties until sold.

Section M of the solicitation stated that it was the government's intent to award a contract to the offeror whose proposal was considered most advantageous (i.e., that which represented the best value to the government) considering the RFP's technical criteria, cost, and other factors. The RFP also stated that technical criteria were considered of greater importance than cost, but that in the event two or more offers were considered technically equivalent, cost would be of primary importance in determining the proposal most advantageous to the government.

Section M of the RFP provided the following technical evaluation criteria and associated point values:

"(1) Demonstrated experience in the management of single family properties similar to and in the general area as those covered by this solicitation (25 points);

(2) Demonstrated experience in developing listings of needed repairs, such as is required by HUD's Minimum Property Standards (MPS), and estimating the cost of repairs (25 points);

(3) Demonstrated experience in soliciting repair bids, coordinating and overseeing repair work and inspecting for satisfactory work completion (15 points);

(4) Demonstrated experience in managing a rental program, including establishing fair market rentals and collections from present and former tenants, for single family properties (10 points);

(5) Understanding of HUD objectives and the required tasks as specified in the solicitation (10 points); and

(6) Evidence of adequately staffed, trained, and equipped office (or the ability to establish such) reasonably located so as to provide convenient service to HUD and its clients in the area to be served, and to carry out all duties specified in the solicitation (15 points)."

On the initial closing date of February 18, 1992, HUD received ten proposals, seven of which were included in the competitive range. After discussions were held, best and final offers (BAFOs) were requested, received, and evaluated. The weighted point scores assigned by each of the three technical evaluators for each of the six evaluation factors were added to determine each offer's total weighted point score. Strengths and weaknesses were

noted by the evaluators for each proposal. Three of the seven proposals were eliminated from further consideration due to higher cost or lower technical scores compared to those of the other four proposals.

The protester's technical proposal received 2,860 of the available 3,000 weighted points; the awardee's technical proposal received 2,515 weighted points. The protester's cost proposal offered a price approximately 18 percent higher than that of the awardee. Although Parks' technical proposal received the highest evaluated point score, the agency's technical evaluators determined that several technical proposals (including Parks' and Urban Group's) were essentially equal technically. An award was made on July 1, 1992, to Urban Group which offered the lowest cost proposal.

The protester contends that its technical proposal was superior to Urban Group's, as reflected in its higher technical point score, so that it should have received the award since technical considerations were of paramount importance under the RFP.¹ Parks is the incumbent contractor for substantially similar services for HUD in Kentucky and, as such, contends that it has specific knowledge of and experience in HUD's real estate management requirements in the Kentucky area. Parks argues that since Urban Group has never performed similar services in the Kentucky area, Parks' proposal clearly has technical superiority over that of the awardee and thus it should have received the award.

The record shows that Urban Group's technical proposal was downgraded under the RFP's evaluation factor for demonstrated experience in the management of single family properties similar to and in the general area as those covered by the RFP (versus Parks' proposal which received a perfect score under this local experience criterion) for its lack of Kentucky experience. Urban Group's detailed proposal, however, earned high scores under each of the

¹Parks also argues that the award to Urban Group was improper since that firm does not have a state real estate broker's license, which is required under Kentucky state law for any person or company who engages in the practice of real estate. Since the RFP here did not expressly require offerors to obtain specific licenses prior to award, the awardee's alleged lack of a state real estate broker's license was not a bar to contract award. Mid-America Mgmt. Servs., Inc., B-244103, June 5, 1991, 91-1 CPD ¶ 537; Mercury Business Servs., Inc., B-237220, Nov. 7, 1989, 89-2 CPD ¶ 443. Accordingly, this protest issue is dismissed.

other criteria--in some instances, Urban Group's scores were higher than scores received by Parks' proposal. The technical evaluation panel ultimately determined that both Parks and Urban Group had substantial management experience and that both firms could successfully perform the contract, such that an award to Parks, considering its higher cost (representing a price difference of \$147 per property), "cannot be justified." The source selection official concurred in the panel's determination that the proposals of Parks and Urban Group were technically equal and selected Urban for award based on its lower price.

The manner in which selection officials use the results of technical and cost evaluations and the extent, if any, of technical/cost tradeoffs are governed only by the tests of rationality and consistency with established evaluation criteria. Association for the Educ. of the Deaf, Inc., B-220868, Mar. 5, 1986, 86-1 CPD ¶ 220. In this regard, source selection officials may consider a numerical scoring advantage based primarily on the advantages of incumbency as not indicating a significant technical advantage that would warrant significant additional costs. Id. Source selection officials must determine whether the point scores are indicative of the technical superiority and what the difference in point scores may mean during contract performance. RCA Serv. Co., B-208871, Aug. 22, 1983, 83-2 CPD ¶ 221. Where selection officials reasonably regard proposals as being essentially equal technically, cost may become the determinative factor in making an award notwithstanding that the evaluation criteria assigned cost less importance than technical considerations. Ogilvy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332.

We find nothing unreasonable in the evaluation of the Urban Group proposal. That proposal reflected similar HUD real estate management experience (which was also encompassed by the same evaluation factor as having local experience), including a current REAM contract, a proposed association with an experienced Kentucky real estate broker, and strong overall credentials. In fact, Urban Group's proposal shows that it has at least as much experience in this area as the protester does. While Parks recently provided services to HUD under a substantially similar contract in Kentucky (which did not include the performance of certain services required in the current RFP), Urban Group's proposal showed that it has successfully managed hundreds of single-family properties for which it has provided similar services as those required here (compared to the current contract requirements which list only 44 such properties). Parks has not provided any support for its contention that Urban Group's proposal received favored treatment in any way and

the protester's mere disagreement with the selection decision does not render that decision objectionable. Ogilvy, Adams & Rinehart, supra; Association for the Educ. of the Deaf, Inc., supra.²

The protest is denied.³



for James F. Hinchman
General Counsel

²In its comments to the agency's report in response to the protest, Parks contends that HUD failed to notify the firm of a perceived weakness in its proposal in addition to the discussion question asked of the firm regarding an unrelated deficiency. The protester's proposal was downgraded in one area by one of the evaluators (regarding the offeror's understanding of HUD's objectives) since Parks' proposal did not discuss its understanding of HUD objectives but instead referenced the protester's incumbency status. Even if this issue should have been the subject of discussions, there is no evidence that this omission would have affected the selection decision. Awarding Parks the total available points under this criterion does not negate the source selection official's decision that the offers were essentially equal since this would have only a negligible effect on the comparative technical point scores.

³To the extent Parks also alleges that Urban Group failed to meet certain contract start-up requirements involving the operation of a local business office in Kentucky starting on July 1 (since Parks alleges that it was unable to contact that office until July 6 and that the awardee was still advertising for staff positions on July 1 and 2), these contentions involve matters of contract administration which are not for consideration by our Office. 4 C.F.R. § 21.3(m) (1). HUD has advised our Office, however, that Urban Group has been performing the contract since July 1 although, apparently due to the July 4 holiday weekend, the contractor did experience some difficulties in providing a fully operational office.